

**REMARKS**

In the non-final Office Action dated May 1, 2008, the Examiner (1) rejected claims 11, 39, 41-46, and 48-57 under 35 U.S.C. § 112, first paragraph; (2) rejected claims 39, 42-44, 46, 49-51, and 53-55 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 6,940,874 to Ruszczyk et al. in view of U.S. Patent No. 7,145,887 to Akgun et al.; and (3) rejected claims 41, 48, and 57 under 35 U.S.C. § 103(a) as being unpatentable over Ruszczyk in view of Akgun in further view of U.S. Patent No. 7,046,382 to Chu.

In addition, the Examiner indicated that claims 45, 52, and 56 would be allowable if rewritten to include all the limitations of their respective base claims and any intervening claims and to overcome the rejection under § 112.

Applicant amends claims 39, 44, 46, 51, 53, and 55 to improve form. Applicant also cancels claims 11, 45, 52, 54, 56, and 57 without prejudice or disclaimer. Claims 39, 41-44, 46, 48-51, 53, and 55 are currently pending.

**1. Rejection of claims 11, 39, 41-46, and 48-57 under § 112**

On pages 2-3 of the Office Action, the Examiner rejected claims 11, 39, 41-46, and 48-57 under 35 U.S.C. § 112, first paragraph. In particular, the Examiner alleged that claims 11, 39, 46, 53, and 57 included features not disclosed in the original application. Applicant respectfully disagrees with the Examiner.

Regarding claims 11, 45, 52, and 56, and 57, Applicant has canceled these claims to advance prosecution. Therefore, the rejection of these claims under § 112 is moot.

Regarding claim 39, the Examiner alleged that the original application does not support “grouping cable modems into a plurality of groups of cable modems, where the cable modems are grouped into the plurality of groups based on a latency associated with each of

the plurality of groups.” Applicant respectfully disagrees. Support for these features of claim 39 can be found in the original specification at least at page 33, lines 2-6, page 49, line 12, to page 52, line 11, and FIGS. 17 and 18.

Regarding claim 46, the Examiner alleged that the original application does not support “means for grouping cable modems into a plurality of groups of cable modems, where the cable modems are grouped into the plurality of groups based on a latency associated with each of the plurality of groups.” Applicant respectfully disagrees. Support for these features of claim 39 can be found in the original specification at least at page 33, lines 2-6, page 49, line 12, to page 52, line 11, and FIGS. 17 and 18.

Regarding claim 53, the Examiner alleged that the original application does not support “grouping cable modems into different groups of cable modems based on latencies associated with the cable modems.” Applicant respectfully disagrees. Support for these features of claim 39 can be found in the original specification at least at page 33, lines 2-6, page 49, line 12, to page 52, line 11, and FIGS. 17 and 18.

Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 39, 46, and 53 under 35 U.S.C. § 112, first paragraph. The rejection of claims 41-44, 48-51, and 55 were based on the rejection of their respective base claims (e.g., one of claims 39, 46, or 53). Therefore, Applicant respectfully requests that the Examiner reconsider and withdraw the rejection of claims 41-44, 48-51, and 55 under 35 U.S.C. § 112, first paragraph.

## **2. Allowable Subject Matter**

At page 7 of the Office Action, the Examiner indicated claims 45, 52, and 56 would be allowable if rewritten to include all the limitations of their respective base claims and any

intervening claims. Applicant hereby (1) amended claim 39 to include the subject matter of claim 45 and any intervening claim (e.g., claim 44); (2) amended claim 46 to include the subject matter of claim 52 and any intervening claims (e.g., claim 51); and (3) amended claim 53 to include the subject matter of claim 56 and any intervening claim (e.g., claim 54).

Therefore, as the Examiner acknowledged, amended independent claims 39, 46, and 53 are allowable over the cited art. Claims 41-44, 48-51, and 55 depend on one of claims 39, 46, or 53, and include all the features of their respective base claims. Therefore, claims 41-44, 48-51, and 55 are allowable over the cited art for at least the same reasons that claims 39, 46, and 53 are allowable over the cited art.

### **3. Conclusion**

As Applicant's remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicant's silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such rejections (e.g., whether a reference constitutes prior art, motivation to combine references, assertions as to dependent claims, etc.) is not a concession by Applicant that such assertions are accurate or such requirements have been met, and Applicant reserves the right to analyze and dispute such assertions/requirements in the future.

In view of the foregoing remarks, Applicant respectfully requests the Examiner's reconsideration of this application, and the timely allowance of the pending claims. If any questions remain, the Examiner is invited to contact the undersigned at the telephone number listed below.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this

paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,  
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